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October 28, 2004

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Appeal*

Name of Case: Worker Appeal

Date of Filing: June 22, 2004

Case No.: TIA-0117

XXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for assistance in filing for state workers' compensation benefits. The Applicant was a DOE contractor employee at a DOE facility. An independent physician panel (the Physician Panel or the Panel) found that the Applicant did not have an illness related to a toxic exposure at DOE. The OWA accepted the Panel's determination, and the Applicant filed an appeal with the DOE's Office of Hearings and Appeals (OHA). As explained below, we have concluded that the appeal should be denied.

*I. Background*

A. The Energy Employees Occupational Illness Compensation Program Act

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. The Act provides for two programs, one of which is administered by the DOE.<sup>1</sup>

The DOE program is intended to aid DOE contractor employees in obtaining workers' compensation benefits under state law. Under the DOE program, an independent physician panel assesses whether a claimed illness or death arose out of and in the course of the worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385(d)(3). In general, if a physician panel issues a determination favorable to the employee, the DOE instructs the DOE contractor not to contest a claim for state workers' compensation

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<sup>1</sup>The Department of Labor administers the other program. See 10 C.F.R. Part 30; [www.dol.gov.esa](http://www.dol.gov.esa).

benefits unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs if it contests the claim. 42 U.S.C. § 7385o(e)(3). As the foregoing indicates, the DOE program itself does not provide any monetary or medical benefits.

To implement the program, the DOE has issued regulations, which are referred to as the Physician Panel Rule. 10 C.F.R. Part 852. The OWA is responsible for this program and has a web site that provides extensive information concerning the program.<sup>2</sup>

The Physician Panel Rule provides for an appeal process. As set out in Section 852.18, an applicant may request that the DOE's Office of Hearings and Appeals review certain OWA decisions. An applicant may appeal a decision by the OWA not to submit an application to a Physician Panel, a negative determination by a Physician Panel that is accepted by the OWA, and a final decision by the OWA not to accept a Physician Panel determination in favor of an applicant. The instant appeal is filed pursuant to that Section. Specifically, the applicant seeks review of a negative determination by a Physician Panel that was accepted by the OWA. 10 C.F.R. § 852.18(a)(2).

## B. Procedural Background

The Applicant was employed as an engineer at DOE's Idaho National Engineering Laboratory. The Applicant worked at the site from 1950 to 1983.

The Applicant filed an application with OWA, requesting physician panel review of one illness – prostate cancer.

The Physician Panel rendered a negative determination on the claimed illness. The Panel agreed that the Applicant had prostate cancer and was exposed to low radiation levels and cadmium. However, the Panel determined that the Applicant's radiation levels were well below accepted occupational limits and that prostate cancer is no longer thought to be related to exposure to cadmium.

The OWA accepted the Physician Panel's negative determination on the claimed prostate cancer. The Applicant filed the instant appeal.

## II. Analysis

Under the Physician Panel Rule, independent physicians render an opinion whether a claimed illness is related to a toxic exposure during employment at DOE. The Rule requires that the Panel address each claimed illness, make a finding whether that illness was related

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<sup>2</sup> See [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy).

to a toxic exposure at DOE, and state the basis for that finding.  
10 C.F.R. § 852.12.

We have not hesitated to remand an application where the Panel report did not address all the claimed illnesses,<sup>3</sup> applied the wrong standard,<sup>4</sup> or failed to explain the basis of its determination.<sup>5</sup> On the other hand, mere disagreements with the Panel's opinion are not a basis for finding Panel error.

In his appeal, the Applicant maintains that the negative determination is incorrect. The Applicant argues that the determination is in error because his radiation exposure was caused "by standing on top of or over a plutonium-beryllium high energy neutron source without shielding between him and the neutron flux" rather than exposure to cadmium as indicated by the Panel.

The Applicant's argument is not a basis for finding panel error. As mentioned above, the Panel addressed the claimed illness, made a determination on the illness, and explained the basis of that determination. While the Panel did not mention the specific origin of the Applicant's radiation exposure, the Panel discussed the Applicant's specific levels of exposure and stated they were "well below" occupational limits. Accordingly, the appeal does not provide a basis for finding panel error and, therefore, should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0117 be, and hereby is, denied.
- (2) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: October 28, 2004

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<sup>3</sup>*Worker Appeal*, Case No. TIA-0030, 28 DOE ¶ 80,310 (2003).

<sup>4</sup>*Worker Appeal*, Case No. TIA-0032, 28 DOE ¶ 80,322 (2004).

<sup>5</sup>*Id.*